

REMARKS

Claims 1-16, 19-21, and 24 were pending in this application.

Claims 1-3, 5, 7-10, 12, 14, 15, 19, 20, and 24 have been rejected.

Claims 4, 6, 11, 13, 16, and 21 have been objected to.

No claims have been amended.

Claims 1-16, 19-21, and 24 remain pending in this application.

Reconsideration and full allowance of Claims 1-16, 19-21, and 24 are respectfully requested.

I. ALLOWABLE CLAIMS

The Applicant thanks the Examiner for the indication that Claims 4, 6, 11, 13, 16, and 21 would be allowable if rewritten in independent form to incorporate the elements of their respective base claims and any intervening claims. Because the Applicant believes that the remaining claims in this application are patentable, the Applicant has not rewritten Claims 4, 6, 11, 13, 16, and 21 in independent form.

II. REJECTION UNDER 35 U.S.C. § 103

The Office Action rejects Claims 1-3, 5, 7-10, 12, 14, 15, 19, 20, and 24 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,978,041 to Masuda et al. ("*Masuda*") in view of U.S. Patent No. 5,920,313 to Diedrichsen et al. ("*Diedrichsen*"). This rejection is respectfully traversed.

In *ex parte* examination of patent applications, the Patent Office bears the burden of establishing a *prima facie* case of obviousness. (MPEP § 2142; *In re Fritch*, 972 F.2d 1260, 1262, 23 U.S.P.Q.2d 1780, 1783 (Fed. Cir. 1992)). The initial burden of establishing a *prima facie* basis to deny patentability to a claimed invention is always upon the Patent Office. (MPEP § 2142; *In re Oetiker*, 977 F.2d 1443, 1445, 24 U.S.P.Q.2d 1443, 1444 (Fed. Cir. 1992); *In re Piasecki*, 745 F.2d 1468, 1472, 223 U.S.P.Q. 785, 788 (Fed. Cir. 1984)). Only when a *prima facie* case of obviousness is established does the burden shift to the applicant to produce evidence of nonobviousness. (MPEP § 2142; *In re Oetiker*, 977 F.2d 1443, 1445, 24 U.S.P.Q.2d 1443, 1444 (Fed. Cir. 1992); *In re Rijckaert*, 9 F.3d 1531, 1532, 28 U.S.P.Q.2d 1955, 1956 (Fed. Cir. 1993)). If the Patent Office does not produce a *prima facie* case of unpatentability, then without more the applicant is entitled to grant of a patent. (*In re Oetiker*, 977 F.2d 1443, 1445, 24 U.S.P.Q.2d 1443, 1444 (Fed. Cir. 1992); *In re Grabiak*, 769 F.2d 729, 733, 226 U.S.P.Q. 870, 873 (Fed. Cir. 1985)).

A *prima facie* case of obviousness is established when the teachings of the prior art itself suggest the claimed subject matter to a person of ordinary skill in the art. (*In re Bell*, 991 F.2d 781, 783, 26 U.S.P.Q.2d 1529, 1531 (Fed. Cir. 1993)). To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to

make the claimed invention and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure. (*MPEP* § 2142).

First, the Office Action once again improperly asserts that *Masuda* discloses "increasing the color temperature of at least one color ... within [a] portion of the display screen." (*Office Action, Page 2, Third paragraph*). *Masuda* contains absolutely no mention of changing the "color temperature" of a "portion" of a display screen.

The Office Action cites two sections of *Masuda* as allegedly disclosing these elements of the claims. The first cited section (column 28, lines 11-65) recites that the color temperature of an entire image is changed based on the type of signal (NTSC signals, high definition signals, computer signals) being received. This portion of *Masuda* simply mentions changing the color temperature of an entire image. This portion of *Masuda* lacks any mention of changing the color temperature in only a "selected portion" of a display screen.

The second cited section of *Masuda* (column 32, lines 62-64) recites that the brightness of different pictures being displayed may be separately controlled. This portion of *Masuda* contains no mention of changing the color temperature of a picture being displayed. In fact, this portion of *Masuda* lacks any mention of adjusting a color temperature at all. The Applicant respectfully notes that the Office Action appears to equate "color temperature" and "brightness," which is incorrect. Color temperature and brightness refer to different characteristics of an image.

Because of this, *Masuda* fails to disclose, teach, or suggest changing the "color temperature" of at least one non-white color within a "selected portion" of a display screen as

recited in Claims 1, 8, 15, and 20.

The Office Action also asserts that *Diedrichsen* recites a system that “can modify at least one non-white color within a selected portion of a display screen.” (*Office Action, Page 2, Last paragraph*). However, whether *Diedrichsen* modifies a “color” within a display screen is irrelevant. The Office Action must show that *Diedrichsen* modifies a “color temperature” of at least one color. The Office Action fails to make this showing.

Diedrichsen recites that different windows in a display may be highlighted using different intensities. (*Abstract*). *Diedrichsen* also recites that different windows in a display may have title bars with different colors. (*Abstract*). Neither of these techniques involves changing the “color temperature” of at least one non-white color. As a result, *Diedrichsen* fails to disclose, teach, or suggest changing the “color temperature” of at least one non-white color as recited in Claims 1, 8, 15, and 20.

For these reasons, the proposed *Masuda-Diedrichsen* combination fails to disclose, teach, or suggest the Applicant’s invention as recited in Claims 1, 8, 15, and 20 (and their dependent claims). Accordingly, the Applicant respectfully requests withdrawal of the § 103 rejection and full allowance of Claims 1-3, 5, 7-10, 12, 14, 15, 19, 20, and 24.

III. CONCLUSION

As a result of the foregoing, the Applicant asserts that the claims in the application are in condition for allowance and respectfully requests an early allowance of such claims.

SUMMARY

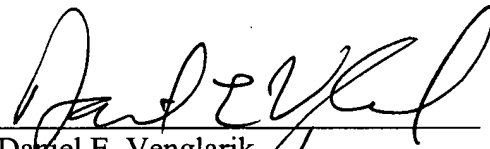
If any outstanding issues remain, or if the Examiner has any further suggestions for expediting allowance of this application, the Applicant respectfully invites the Examiner to contact the undersigned at the telephone number indicated below or at *dvenglarik@davismunck.com*.

The Commissioner is hereby authorized to charge any additional fees connected with this communication (including any extension of time fees) or credit any overpayment to Deposit Account No. 50-0208.

Respectfully submitted,

DAVIS MUNCK, P.C.

Date: 9-28-04


Daniel E. Venglarik
Registration No. 39,409

P.O. Drawer 800889
Dallas, Texas 75380
Phone: (972) 628-3600
Fax: (972) 628-3616
E-mail: *dvenglarik@davismunck.com*